

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, January 2, 2003

Division One

A097061 -- The People v. Rogelio Ruiz Palafox.

Competent counsel represented appellant at all stages of the proceedings. There was no error in the proceedings or in the sentence imposed. There are no issues that require further briefing. The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, January 2, 2003

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and F. Abad, Deputy Clerk.

A098168 In re Denise R., a Person Coming Under the Juvenile Court Law.
Social Services Agency,
v.
Dennis A.
Cause called and argued by Robert L. Weiss, counsel for respondent. Tina Mulligan, counsel for appellant did not appear due to medical emergency. The court granted the request to file a late appellant's reply brief and respondent is allowed 20 days to respond by letter brief.

A098399 Dover Place,
v.
William Coffey.
Cause called and argued by Charles A. Koss, counsel for appellant, and Fred Scholz, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, January 2, 2003

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; and B. Robbins, Deputy Clerk.

- A095796 The People,
v.
Mario Antonio Irias.
Cause called and argued by Randi Covin, counsel for appellant, and Dorian Jung, counsel for respondent. Cause ordered submitted.
- A094740 The People,
v.
Albert Poon.
Cause called and argued by Donald Bergerson, counsel for appellant, and Nancy Tung, counsel for respondent. Cause ordered submitted.
- A097702 Greg Smith,
v.
Shahnaz Sadegh.
Cause called and argued by Walter Cook, counsel for appellant, and Kenneth Frucht, counsel for respondent. Cause ordered submitted.
- A098147 Kinsmith Financial Corporation,
A098661 v.
J. Robert Gilroy.
Cause called and argued by David Grant, counsel for appellant, and Ralph Shapira, counsel for respondent. Cause ordered submitted.

Court Adjourned

A095029
A095939

James McBride, et al.,

v.

Armand Estrada, et al.

Cause called and argued by James McBride, appellant in pro per, and Armand Estrada, counsel for respondents. Cause ordered submitted.

Court Adjourned

Thursday, January 2, 2003 (continued)

Division Two

A095889 -- The People v. Taylor Jason Pina.

We affirm the conviction. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Five

A100847 -- San Francisco Baykeeper v. The Superior Court of San Francisco County; San Mateo Countywide Stormwater Pollution Prevention Program et al., R.P.I.

The Court:* Therefore, let a peremptory writ of mandate issue commanding respondent superior court to set aside and vacate its order granting real parties' peremptory challenge of Judge McBride and to enter a new and different order rejecting that challenge as untimely filed. This decision shall be final as to this court within five days. (Cal. Rules of Court, rule 24(d).) The stay previously issued by this court shall be dissolved upon the issuance of the remittitur. (Cal. Rules of Court, rule 25.) Petitioner shall recover the costs it incurred in this writ proceeding. (Cal. Rules of Court, rule 56.4(a).) Real parties' request that we direct further proceedings be heard by a judge who has not been the subject of the parties' peremptory challenges is denied. (§ 170.1, subd. (c).) (Not for Publication.)

*Before Stevens, Acting P.J., Simons, J. and Gemello, J.

Friday, January 3, 2003

Division Two

A099458 -- Jack In The Box, Inc., et al. v. Workers' Compensation Appeals Board and Levi Morrison.

The petition for writ of review is denied. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A095073 -- In re Phillip T., a Person Coming Under the Juvenile Court Law. The People v. Phillip T.

The order is remanded to the trial court with instructions to delete the designation of attempted robbery as a section 707, subdivision (b) offense. Otherwise, the order is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A097204 -- The People v. Armando Soterio.

The judgment is reversed. Following remand, the court must permit appellant to withdraw his plea of no contest and proceed to trial, if he wishes to do so. McGuinness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

Monday, January 6, 2003

Division One

A097611 -- The People v. Todd Kevin Denny.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

A098969 -- In re the Marriage of Bert J. Postma and A. Catrin Hasson.

The judgment is affirmed. Costs on appeal are awarded to the respondent, Postma. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A097134 -- The People v. Mendoza V. Myers.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A097782 -- The People v. Oges Roberson.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Four

A092128 -- Joseph Brazil, Jr. v. John Brazil, Individually and as Trustee, etc., et al.; Constance Brazil, Individually and as Trustee, etc., et al.

By the Court: Order Denying Rehearing. The petition for rehearing is denied. Appellant's letter request that we appoint Mr. Baxter as his legal counsel is also denied. Kay, P.J.

A099133 -- Dave Donaldson v. Janette Balico.

The purported appeal is dismissed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Monday, January 6, 2003 (continued)

A097430 -- The People v. Wayne Walter Morin.

The order of commitment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A095988 -- Gari Laura Miller v. Peter Garvin.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, January 07, 2003

Division One

**A100739 -- Tammy P. v. The Superior Court of Contra Costa County;
Children and Family Services, R.P.I.**

The orders appealed from are affirmed. Margulies, J. We Concur:
Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A096778 -- The People v. Paul Christopher Buckley.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J.
(Not for Publication.)

A099008 -- Damien Charles Custer et al. v. Roger C. Strawbridge et al.

The appealed order is affirmed. Respondents shall have their costs on
appeal. Respondents also shall be entitled to recover their attorney fees on appeal
under rule 26(a)(4). The amount of fees awardable in the context of this appellate
review is referred to the trial court, and may be fixed by the trial court upon
presentment of an appropriate application. Lambden, J. We Concur: Kline, P.J.,
Ruvolo, J. (Not for Publication.)

**A097192 -- In re Earl D., a Person Coming Under the Juvenile Court
Law. The People v. Earl D.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo,
J. (Not for Publication.)

A097554 -- The People v. Susan Aileen Wold.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J.
(Not for Publication.)

Tuesday, January 07, 2003 (continued)

Division Three

A098316 -- In re Rafael D. and Maria D., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Jill D.

Respondent's motion to dismiss the appeal regarding Maria D. is granted. Our decision does not affect Jill's appeal of the court's jurisdiction and disposition orders regarding Rafael. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

A097002 --Donna Smilow v. John Muir Medical Center et al.

The judgment is reversed as to the cause of action for assault and battery, and affirmed as to the causes of action for intentional and negligent infliction of emotional distress. The parties will bear their own costs on appeal. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A096991 -- The People v. Steven Delawrence Mason.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Wednesday, January 8, 2003

Division One

A094740 -- The People v. Albert King Poon.

For the foregoing reasons, we affirm the judgment. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A097107 -- California Advocates For Nursing Homes Reform et al. v. Diana M. Bonta, as Director, etc., et al.

Appellants have produced considerable evidence showing that the departmental policies and practices at issue in this case were intended by DHS to apply generally, not simply in a specific case, and that they implement, interpret and make specific estate recovery provisions of the federal Medicaid Act and state Medi-Cal Act, which DHS administers. Because DHS has not conclusively negated appellants' claim that the policies and practices described in this opinion are not "regulations" within the meaning of the APA, and has failed to demonstrate that there are no material issues of fact that require the process of trial, the trial court erred in granting summary judgment in favor of DHS. Accordingly, the judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. Appellants are awarded their costs on appeal. Kay, P.J. We Concur: Lambden, J. Ruvolo, J. (Certified for Publication.)

Division Five

A097666 -- In re the Marriage of Jennifer and Andrew Hibbert.

The order declining custody jurisdiction is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A095025 -- Lynn Robertson v. Leal Reinhart.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

Thursday January 9, 2003

Division One

A097623 -- David Collins et al. v. Overnite Transportation Company.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Certified for Publication.)

Division Two

A096812 -- In re Nicholas B. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Social Services Department v. Susanne B.

The orders are affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A097156 -- The People v. Stephen Bruce Davenport.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A097239 -- Sandy Ngog Dung Nguyen v. Carl B. Shapiro et al.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Four

A098673 -- In re Jessica S., a Person Coming Under the Juvenile Court Law. The People v. Jessica S.

The orders adjudicating appellant a ward of the court and placing her on probation in her parents' home are affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Thursday January 9, 2003 (continued)

Division Five

A099123 -- The People v. Michael D. Hill.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A095351 -- Canal Street, LTD., et al. v. Robert A. Sorich, as Personal Representative, etc., et al.

The judgment is reversed. The matter is remanded to the superior court with directions to fix the date of plaintiffs' waiver of the Fund approval condition as June 12, 1997, to calculate late penalties on the \$250,000 component accordingly, and then to reinstate judgment for plaintiffs. Costs to plaintiffs/appellants. Jones, P.J. We Concur: Simons, J., Margulies, J.* (Not for Publication.)

*Associate Justice, Division One of the First District Court of Appeal, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, January 10, 2003

Division One

A097345 -- The People v. Jack Ryder Lang, Jr.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A097864 -- The People v. Demar Bernstine.

The order revoking probation is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A096165 -- In re Steven S., a Person Coming Under the Juvenile Court Law. The People v. Steven S.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A095737 -- The People v. Nancy Yvonne Detrick et al.

The judgment is affirmed. Pollak, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A099267 -- The People v. Weston Von Krolop.

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Friday, January 10, 2003 (continued)

A098022 -- Richard Paloma v. City of Newark.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A096362 -- The People v. Christopher Pridemore.

We order that the language in the sentencing minute order prohibiting defendant from being released early or receiving sheriff's parole be stricken. In all other regards, the judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A092782 -- The People v. Harold Austin Wallace.

The order striking Wallace's second strike is reversed. The cause is remanded to the trial court for further proceedings consistent with this opinion. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Certified for Publication.)

Division Five

A096210 -- The People v. Edward Berry Armstrong.

The sentence is vacated. The case is remanded for the appointment of new counsel and further sentencing. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A098435 -- In re Noy B., a Person Coming Under the Juvenile Court Law. The People v. Noy B.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A099897 -- In re Latoya F., a Person Coming Under the Juvenile Court Law. The People v. Latoya F.

The orders adjudicating appellant a continued ward of the court and placing her on probation in her mother's home are affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Friday, January 10, 2003 (continued)

A098863 -- The People ex rel. The Foundation for Taxpayer and Consumer Rights v. Henry Duque.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Publication.)

A094496 -- The People v. Ronald Johnson.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A098097 -- In re Zachary M., a Person Coming Under the Juvenile Court Law. The People v. Zachary M.

The disposition order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Monday, January 13, 2003

Division One

A099091 -- The People v. Tami Lynn Kirk.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A095029 and A095939 -- James McBride et al. v. Armand M. Estrada et al.

The Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on December 20, 2002, be modified as follows: (See order.) There is no change in the judgment. Appellants' petition for rehearing is denied. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A097702 -- Greg Smith v. Shahnaz Sadegh.

The order denying the motion to strike is dismissed, and the matter is remanded to the trial court to provide Smith with the opportunity to show, if he can, a probability that he will prevail on at least one of his claims. Sadegh is awarded her costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A097316 -- Susan Walsh v. Truck Insurance Exchange Company.

The judgment is affirmed. Costs are awarded to respondent. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A096921 -- The People v. Deborah Lynn Gurnett.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Monday, January 13, 2003 (continued)

Division Three

**A093974 -- American Home Assurance Company, et al. v. Societe
Commerciale Toutelectric.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A098637 -- The People v. Janet Lynn Gunn.

We accept respondent's concession, vacate the sentence, and remand for resentencing. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

A097113 -- Cynthia Hernandez v. Timothy Cooper.

The purported appeal from the denial of the motion for new trial is dismissed. The judgment and the denial of the motion for entry of JNOV are affirmed. Respondent shall recover his costs of appeal. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Tuesday, January 14, 2003

Division Two

A099684 -- The People v. Steven Andrew Dobos.

The order revoking appellant's probation and the sentence imposed are affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A097561 -- Cindy Ranger v. Janie Bonham.

The orders appealed from are affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Four

A100025 -- The People v. Leonard Neely.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, January 14, 2003

The Court convened at 9:30 a.m. at its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kay, P.J., Sepulveda, J., and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Steve Zoet, Bailiff.

A096082 People
v.
David Anthony Gomez
Cause called. Patricia Cooney argued on behalf of appellant Gomez. Deputy Attorney General Margo Yu argued on behalf of respondent. Cause submitted.

A096767 Dennis W. Rippey
v.
Helen M. Reavis
Cause called. Lawrence Buchanan argued on behalf of appellant Rippey. Joan Mann Thomas argued on behalf of respondent. Cause submitted.

At this point, the court reconstituted itself from Kay, P.J., Sepulveda, J. and Rivera, J. to Kay, P.J., Reardon, J. and Sepulveda, J.

A099320 Licette Guzman Mata et al.
A099340 v.
Mario Mata et al.
Causes called. Frank J. Christy, Jr. and Eric G. Young argued on behalf of appellants Licette Mata et al. Joan Deborah B. Edelson argued on behalf of respondents. Causes submitted.

A094913 Lucia Prado
A097069 v.
Fred Damato et al.
Causes called. Eric Schenk argued on behalf of appellant Prado. John Halley and Linda Mallette argued on behalf of respondents. Causes submitted.

At this point, the court reconstituted itself from Kay, P.J., Reardon, J. and Sepulveda, J. to Kay, P.J., Reardon, J. and Rivera, J.

A100099 City of Half Moon Bay
v.
San Mateo Superior Court et al.
Cause called. Tara Mueller argued on behalf of appellant California Coastal Commission. Anne E. Mudge argued on behalf of real party in interest Joyce Yamagiwa. Cause submitted.

A098199 California First Amendment Coalition et al.
v.
California Department of Health Services et al.
Cause called. James Chadwick argued on behalf of appellants California First Amendment et al. Deputy Attorney General Angela Bothelo argued for respondents. Cause submitted.

The Court adjourned at 11:49 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, January 14, 2003

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J., Reardon, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Steve Zoet, Bailiff.

A096251

People

v.

Emery Milligan

Cause called. Victor Morse argued for appellant Milligan. Stan Helfman argued for respondent. Cause submitted.

At this point, the court reconstituted itself from Kay, P.J., Reardon, J., and Rivera, J. to Kay, P.J., Reardon, J., and Sepulveda, J.

A099217

Henry Curry

v.

Summit Medical Center et al.

Cause called. In pro per appellant Curry argued. Thomas E. Pfalzer and W. David Walker, on behalf of respondents, submitted on the briefs. Cause submitted.

A098959

Deepak Bhandal

v.

CSK Automotive, Inc.

Cause called. In pro per appellant Deepak Bhandal teleargued. William S. Jue teleargued for respondent. Cause submitted.

The Court adjourned at 2:01 p.m.

Wednesday, January 15, 2003

Division One

A097871 -- The People v. Kelly Cochran.

The order revoking appellant's probation and the sentence imposed are affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A100034 -- In re Bashir H., a Person Coming Under the Juvenile Court Law. The People v. Bashir H.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A098057 -- The People v. Jorge Peraza.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, January 15, 2003

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., and I. Santos, Deputy Clerk.

A098169 In re Christopher J.
The People,
v.
Christopher J.
Cause called and argued by Robert Roth, counsel for appellant, and Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A097737/
A098327 Hillsboro Properties,
v.
Public Utilities Commission of The State of California;
Robert Hambly et al., RPI.
Western Manufactured Housing Community Association,
v.
Public Utilities Commission of The State of California;
Robert Hambly et al., RPI.
Cause called and argued by David Spangenberg and Edward Poole, counsels for petitioners, Carrie Pratt, counsel for respondent, and James Allen, counsel for real party in interest. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

- A094963 The People,
v.
Virgilio Matias Aveja.
Cause called and argued by Gary Garfinkle, counsel for appellant, and
George Hindall, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.
- A097257 Phoenix American Incorporated,
v.
Greg Thornton et al.
Cause called and argued by Benjamin Johnson, counsel for appellant, and
Joseph Demko, counsel for respondent. Cause ordered submitted.
- A096323 George Robert Smith et al.,
v.
Mobil Oil Corporation.
Cause called and argued by Mary Wilcox, counsel for appellant, and Bryce
Anderson, counsel for respondent. Cause ordered submitted.
- A098892 Mark Barnes,
v.
Judith Stadler et al.
Cause called and argued by James DiFrank, counsel for appellant, and
Deborah Sandine, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, January 16, 2003 at 9:30 a.m.

Wednesday, January 15, 2003 (continued)

Division Four

A098432 -- In re Amanda J., a Person Coming Under the Juvenile Court Law. San Francisco County Department of Human Services v. Kenneth H.

The postjurisdictional orders are affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, January 16, 2003

Division One

A095432 -- The People v. Louis Eugene Anderson.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A097560 -- Janet Campbell v. Regents of the University of California.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A100244 -- In re Julie E., et al., Persons Coming Under the Juvenile Court Law. Social Services Agency, et al. v. Sabrina E.

By the Court: The Court having reviewed appellant's response to the order to show cause filed November 1, 2002, the appeal on file herein is dismissed as untimely. The justices participating in this matter were Marchiano, P.J. Stein, J., and Swager, J. Marchiano, P.J.

A098147, A098661-- Kinsmith Financial Corporation v. J. Robert Gilroy.

The orders of the Orange County and Lake County courts are affirmed. Kinsmith is entitled to costs on appeal. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication.)

A097456 -- In re the Marriage of Daniel P. Hollingworth and Nora L. Reed.

The order is reversed and the matter is remanded to the trial court to take further action consistent with this opinion. Ms. Reed is awarded her costs on appeal. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A099731 -- The People v. Robert C. Myers.

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, January 16, 2003

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A091017 East Bay Municipal Utility District
v.
FMC Corp., et al.
Cause called and argued by David Ring, counsel for appellant Shell Oil, Steven B. Katz, counsel for appellant FMC Corp. and Ray Cardozo and Paul Fogel, counsel for respondent EBMUD. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A096269 Hilda Namm
v.
Farmers Insurance Group, et al.
Cause called and argued by Benjamin Cintz, counsel for appellant and Mark Bonino, counsel for respondents. Cause ordered submitted.

A097492 Curtis Mackey
v.
Bristol West Insurance Services of California, et al.
Cause called and argued by Robert Goldstein, counsel for appellant, Richard G. DeLaMora, counsel for respondent and Charissa Dorian, amicus counsel on behalf of respondent.

A096588 Planned Parenthood Golden Gate

A098455 v.

A098457 Jeannette Garibaldi, et al.

Rossi Foti

Causes called and argued by Catherine Short, counsel for appellant Garibaldi, Terry L. Thompson, counsel for appellant Foti and Beth Parker, counsel for respondent. Causes ordered submitted.

COURT ADJOURNED.

Thursday, January 16, 2003 (continued)

Division Four

A097987 -- The People v. Rodney Thomas.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A097190 -- In re Rory J., a Person Coming Under the Juvenile Court Law. The People v. Rory J.

The judgment is reversed in part. Rory J. remains a ward of the court pursuant to the unappealed sustaining of counts 3 and 4. The case is remanded to the juvenile court for such sentencing as is required by our reversal of count 1. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A096342 -- The People v. Daniel William Knottnerus.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Friday, January 17, 2003

Division One

A098266 -- In re Cody M. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Service Agency v. Linda M.

As the record does not show that the notice requirements of the ICWA were met prior to the March 22, 2002 section 366.26 hearing, the order terminating parental rights is reversed and the matter is remanded to the juvenile court. If the court determines, on proper evidence, that Kristi is in fact an Indian child, a further section 366.26 hearing must be held. If the requisite notice is given and it is not shown that Kirsti is an Indian child, the existing order is to be reinstated. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A099042 -- The People v. Richard Wilson McClaslin.

Appellant was given a fair trial. The jury was properly instructed. There was no error in the proceedings. There are no issues requiring further briefing. The judgment and sentence are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A098168 -- In re Denise R., a Person Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Dennis A.

The jurisdictional and dispositional orders of the juvenile court are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A093393 -- Zion Lavie et al. v. Procter & Gamble Co. et al.

We conclude that substantial evidence supports the trial court's finding that plaintiff had failed to show the commercials were likely to deceive members of the public, and that the commercials at issue were neither deceptive nor misleading under the UCL or the false advertising law. Therefore, we need not reach issues regarding the availability of restitution relief or the reach of the court's equitable powers in UCL cases. The judgment is affirmed. Respondents are awarded their costs on appeal. Kline, P.J. I Concur: Lambden, J. (See concurring opinion by Haerle, J.) (Certified for Partial Publication.)

Friday, January 17, 2003 (continued)

A099980/A100328 -- City and County of San Francisco v. The Superior Court of San Francisco County; Tammy B. Haygood et al., R.P.I.

The judgment is reversed and the matter is remanded to the trial court with directions to grant the Elections Commission's writ of mandate and to deny the cross-petition for writ of mandate. The trial court shall enter judgment consistent with these instructions. The petition for writ of mandate filed in this court is dismissed as moot. Costs are awarded to the Elections Commission. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Friday, January 17, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Parrilli J., and C. Turner, Deputy Clerk.

Justice McGuiness announced that the panel for the following case is comprised of Parrilli, J., Corrigan, J., and himself. However, Justice Corrigan is away from the court and is unavailable for oral argument. All parties were informed that Justice Corrigan will review the taped proceedings. Counsel agreed to waive her presence. The court proceeded with oral argument.

A094414 Industrial Indemnity Company, et al.,

A096395 v.

Apple Computer, Inc.

Cause called and argued by March C. Goodman, counsel for appellant, and George Alan Yuhas, counsel for respondent. Cause ordered submitted.

Justice McGuiness announced that the panel for the following case is comprised of Parrilli, J., Corrigan, J., and himself. However, Justice Corrigan is away from the court and is unavailable for oral argument. All parties were informed that Justice Corrigan will review the taped proceedings. Counsel agreed to waive her presence. The court proceeded with oral argument.

A096396 Insurance Company of the State of Pennsylvania,

v.

Apple Computer Inc.,

Cause called and argued by George Yuhas, counsel for appellant, and Robert G. Seeds, counsel for respondent.

Cause ordered submitted.

Justice McGuiness announced that the panel for the following case is comprised of Parrilli, J., Corrigan, J., and himself. However, Justice Corrigan is away from the court and is unavailable for oral argument. All parties were informed that Justice Corrigan will review the taped proceedings. Counsel agreed to waive her presence. The court proceeded with oral argument.

A092667 The People,
v.
Carlos Sanchez Delgado.
Cause called and argued by Richard William Such, counsel for appellant, and
Amy Haddix, counsel for respondent.
Cause ordered submitted.

Justice Parrilli announced that the panel for the following case is comprised
of Corrigan, J., Pollak J., and herself. However, Justice Corrigan is away
from the court and is unavailable for oral argument. All parties were
informed that Justice Corrigan will review the taped proceedings. Counsel
agreed to waive her presence. The court proceeded with oral argument.

A095666 Michael A. Lopez, et al.,
v.
World Savings and Loan Assn.
Cause called and argued by Thomas Edward Alborg, counsel for appellant,
and Barry Hovis, counsel for respondent. Cause ordered submitted.

A095843 Carolyn R. Frazier,
v.
Harvey Yarbrough, et al.,
Cause called and argued by Marylon Boyd, counsel for appellant, Hunter
Pyle and Janice Sperow, counsel for respondents. Cause ordered submitted.

Justice McGuinness announced that the panel for the following case is
comprised of Parrilli, J., Corrigan, J., and himself. However, Justice
Corrigan is away from the court and is unavailable for oral argument. All
parties were informed that Justice Corrigan will review the taped
proceedings. Counsel agreed to waive her presence. The court proceeded
with oral argument.

Justice Parrilli left the bench

.
Justice McGuinness announced that the panel for the following case is
comprised of Corrigan, J., Pollak J., and himself. However, Justice Corrigan
is away from the court and is unavailable for oral argument. All parties were
informed that Justice Corrigan will review the taped proceedings. Counsel
agreed to waive her presence. The court proceeded with oral argument

.

A097243

John E. Torres

v.

Keith Traina, et al.,

Cause called and argued by David L. Axelrod, counsel for appellant arguing via-teleconference, and Michael J. Daley, counsel for respondent.

Cause ordered submitted.

court adjourned

Friday, January 17, 2003 (continued)

Division Four

A096467 -- The People v. Cary Gilmore.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J.
(Not for Publication.)

A096251 -- The People v. Emery Milligan.

The judgment of conviction is affirmed. Reardon, J. We Concur: Kay,
P.J., Rivera, J. (Not for Publication.)

A096612 -- The People v. Daryoosh Ali Pazdel.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda,
J. (Not for Publication.)

A099164 -- The People v. Grant Leroy Willingham.

The judgment and sentence imposed are affirmed. Sepulveda, J. We
Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

**A099084 -- In re Robin J., a Person Coming Under the Juvenile Court
Law. The People v. Robin J.**

The order adjudicating appellant a ward of the court and placing him
outside the family home is affirmed. Jones, P.J. We Concur: Stevens, J., Simons,
J. (Not for Publication.)

A096805 -- Henri Turney v. City of Oakland, et al.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

Tuesday, January 21, 2003

Division One

A100541 -- In re Anthony B., a Person Coming Under the Juvenile Court Law. The People v. Anthony B.

We affirm the order adjudicating Anthony a ward of the court pursuant to section 602 and placing him in CYA. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A099564 -- The People v. Kenneth Tyron Oglesby.

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A096986 -- The People v. William Mathew Piper.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A097735 -- Norman J. Colavincenzo v. Stephen B. Lopez.

The trial court's amended order directing the payment of respondent's attorney fees is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A096328/A097394 -- Renee Collins et al. v. Barbara Kanoff et al.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A095023 -- The People v. Andrew N. Lewis.

A093802 -- In re Andrew N. Lewis, on Habeas Corpus.

The four-year enhancement added to count three is dismissed. The judgment is otherwise affirmed. The petition for writ of habeas corpus is denied. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, January 21, 2003 (continued)

Division Three

A097843 -- Caselli Construction v. Alvin Jacobs.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A097471 -- Syufy Enterprises, L.P. v. City of Oakland.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A098959 -- Deepak Bhandal v. CSK Automotive, Inc.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A094913 & A097069 -- Luci Prado v. Fred Damato et al.

The judgments are affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Wednesday, January 22, 2003

Division One

A099219 -- In re Eduardo A., a Person Coming Under the Juvenile Court Law. The People v. Eduardo A.

The juvenile court is directed to amend the dispositional order to add the maximum term of confinement. In all other respects, the jurisdictional and dispositional orders are affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A094813 -- The People v. Michael R. Ormiston.

Accordingly, we reverse the findings on the two section 12022.1 enhancements, and remand the case to the trial court for resentencing. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Partial Publication.)

Division Two

A097626 -- Doreen Chiu v. Donald K. Wadsworth et al.

The judgment as to the punitive damages award is vacated and the matter is remanded for proceedings consistent with this opinion. The judgment is otherwise affirmed. No costs are awarded. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A098233 -- Dusty Denise Combs v. Vacation Rentals, USA, et al.

The judgment is affirmed. Respondents are awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A095035 -- Harry Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; Alan Wunderman.

The judgment is affirmed and Wunderman is to pay costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Wednesday, January 22, 2003 (continued)

A096987 -- The People v. David Schaben.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A098460 -- R. Michael Tielborg v. Mohammad Omar Mohammad.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Three

A101209 -- Environmental Law Foundation v. Wykle Research, Inc.

By the Court: On the Court's own motion, the above-referenced appeal is dismissed as premature. Appellant purports to appeal from the trial court's August 27, 2002 order granting respondent's motion for summary judgment, as amended by the trial court's November 25, 2002 order on reconsideration. Such orders are not appealable. An appeal may be taken only after the trial court has entered judgment in the matter. (See *Stolz v. Wong Communications Limited Partnership* (1994) 25 Cal.App.4th 1811, 1816.)

Thursday, January 23, 2003

Division One

A094740 -- The People v. Albert Poon.

By the Court: The petition for rehearing is denied. Marchiano, P.J.

A095735 -- The People v. Alexander Garcia Stovall.

As appellant acknowledges, in *People v. Engelman* (2002) 28 Cal.4th 436, 445, 449, our high court recently disapproved of the instruction and directed “that CALJIC No. 17.41.1 not be given in trials conducted in the future,” but concluded that giving it does not constitute error. We are obliged to follow the binding resolution of this issue by the California Supreme Court, and conclude that the trial court did not commit error by giving CALJIC No. 17.41 to the jury. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *People v. Martinez* (2002) 95 Cal.App.4th 581, 586; *People v. Superior Court (Moore)* (1996) 50 Cal.App.4th 1202, 1211; *People v. Jaramillo* (1993) 20 Cal.App.4th 196, 198.) Further, appellant has failed to demonstrate that the instruction prejudicially impacted his trial in any way. The record is devoid of a report of misconduct or indication that the jury was affected in any way by the instruction. Thus, appellant was not harmed by the instruction. Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A098519 -- The People v. Wilford Arnett Wadley.

The judgment of conviction is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

Division Two

A097107 -- California Advocates For Nursing Home Reform et al. v. Diana M. Bonta, as Director, etc., et al.

The Court: Order Modifying Opinion. It is ordered that the opinion filed herein on January 8, 2003, be modified as follows: (See order.) There is no change in the judgment. Kline, P.J. (Certified for Publication.)

Thursday, January 23, 2003 (continued)

Division Three

A098743 -- Baker Street Homeowners' Association v. Old Republic Title Company.

The judgment is affirmed. Pollak, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A095843 -- Carolyn R. Frazier v. Port of Oakland et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. The Port's motion for sanctions and its motion to strike reply brief exhibits are denied. Pollak, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A095666 -- Myrtle A. Lopez v. World Savings and Loan Association.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A093107 -- The People v. Johnnie L. Mosley.

A098198 -- In re Johnnie L. Mosley, on Habeas Corpus.

The judgment is affirmed. The petition for writ of habeas corpus is denied. McGuinness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

A099602 -- The People v. Charles Levi Bedford.

The judgment of conviction is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A098517 -- The People v. Aaron Majors.

The judgment of conviction is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, January 23, 2003 (continued)

A099217 -- Henry Curry v. Bruce Moorstein.

The judgment of dismissal is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A099506 -- The People v. Theodore Michael Stanton.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A098306 -- Simon S. Levy v. Gray Davis, as Governor, et al.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

A098048 -- The People v. Nathaniel McKenzie.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A098518 -- The People v. Antia Estela Young.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, January 23, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A09879 Farmers Insurance Exchange

8

v.

Efren R. Cervantes

Cause called and argued by Charles G. Kinney, counsel for appellant, and by Steven E. McDonald, counsel for respondent. Cause ordered submitted.

A09710 Raymond Fong et al.

3

v.

John Brennan et al.

Cause called and argued by John Brennan, appellant in pro per, and by John W.R. Wiley, counsel for respondent. Cause ordered submitted.

A09579 Jerry Davis

5

v.

County of San Mateo

Cause called and argued by David P. Bonaccorsi, counsel for appellant, and by Miruni Soosaipillai, counsel for respondent. Cause ordered submitted.

A09783 Diane E. Allen

9

v.

City of Petaluma et al.

Craig Walker, et al.

Cause called and argued by Raymond N. Erlach, counsel for appellant, by Rick W. Jarvis, counsel for respondent and by Robert P. Olikier, counsel for intervenors. Cause ordered submitted.

A09668 The People

6

v.

John Solomon

Cause called and argued by Hilda E. Scheib, counsel for appellant, and by Joan Killeen, counsel for respondent. Cause ordered submitted.

A09670 The People
7 v.
Yolanda Martinez Ponce
Argument continued.

At this point in the proceedings Justice Gemello left the bench and Justice Simons took her place.

A09790 Pamela Curry
1 v.
Thomas From, II
Cause called and argued by Pamela Curry, appellant in pro per, and by Tom Peraic, counsel for respondent. Cause ordered submitted.

A09697 American States Insurance Company
5 v.
Paul Castillo et al.
Cause called and argued by Harlin Watkins, counsel for appellant, and by Lori A. Sebransky, counsel for respondent. Cause ordered submitted.

A09745 The People
0 v.
Alonzo Marquez Austin
Cause called and argued by Jeffrey A. Glick, counsel for appellant, and by Allen Yannow, counsel for respondent. Cause ordered submitted.

A09834 The People
4 v.
Britton Allen Sneed
Cause called and argued by Robert S. Condie, counsel for appellant, and by Nancy H. Tung, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Gemello took her place.

A09747 Michael H. Yancy
2 v.
Christopher T. White
Cyril Ramer
Cause called and argued by Richard W. Osman, counsel for appellant, and by Edward A. Koplowitz, counsel for respondent. Cause ordered submitted.

A10073 Ruben J.
0 v.
Superior Court
Social Services Agency et al.
Cause called and argued by Robert E. Daye, counsel for petitioner, and by
Portor Goltz, counsel for real party in interest. Cause ordered submitted.

A09870 Tom Church
5 v.
Zoe Peetoom et al.
Cause called and argued by Tom Church, appellant in pro per, and by Owen P.
Martikan, counsel for respondent. Cause ordered submitted.

Court adjourned at 11:56 a.m.

Friday, January 24, 2003

Division Three

A098495 -- The People v. Shawn Iver Chapel.

In sum, we find no arguable issues for review pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A094878 -- Douglas R. Schmidt v. Raymond M. Etter, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

A098442 -- The People v. Taumu Leroy James.

As respondent notes, the record is clear that defendant's plea was induced by the court's promise that the issue of the validity of pretrial evidentiary rulings would be preserved for appeal with a promised issuance of a certificate of probable cause. However, the issuance of such a certificate does not preserve the issue for appeal, despite the court's assurances. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 896; *People v. Soriano* (1992) 4 Cal.App.4th 781, 785, fn. 2.) We accordingly reverse the judgment and remand for further proceedings. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A099948 -- The People v. Roland David Pittman.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Friday, January 24, 2003 (continued)

Division Five

A097901 -- Pamela Curry v. Thomas P. From II.

Appellant's arguments are without merit, and the orders of the trial court as to which we have appellate jurisdiction are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A100013 -- The People v. Mark Charles Daigre.

The resentencing is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A097876 -- The People v. Michael David Lendahl.

Lendahl's sentence is modified to delete any reference to small claims judgments, such that his probation is not conditioned on payment of such judgment. As so modified, the judgment of conviction and sentence is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Monday, January 27, 2003

Division One

A098512 --The People v. Arthur William Henderson.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A096851 -- The People v. Marcus Amador Lujan.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A098428 -- In re Nickolas M. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Krystina M.

The orders of the juvenile court terminating appellant's parental rights to Nickolas, Justin and Timothy are affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A096676 -- In re Dexter S., a Person Coming Under the Juvenile Court Law. Del Norte County Department of Health & Social Services v. Joseph S.

The trial court's order of October 10, 2001, is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A097243 -- John E. Torres v. Keith Traina.

The judgment is reversed and the matter is remanded for further proceedings. Plaintiff shall recover costs on appeal. Pollak, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Monday, January 27, 2003 (continued)

A093437 -- NGOC Tran v. Farmers Group, Inc., et al.

The Court: Order Denying Rehearing and Modifying Opinion.
Respondents' petition for rehearing is denied. The opinion filed herein on December 27, 2002 is modified as follows: (See order.) There is no change in the judgment. McGuiness, P.J. (Certified for Publication.)

A093437 -- NGOC Tran v. Farmers Group, Inc., et al.

By The Court: The request for depublication of the December 27, 2002, opinion, is denied. McGuiness, P.J.

Tuesday, January 28, 2003

Division One

A098399 -- Dover Place, LLC v. William Coffey.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A096778 -- The People v. Paul Christopher Buckley.

By the Court: The petition for rehearing is denied. (Kline, P.J. would grant the petition.) Haerle, Acting P.J.

A097294 -- In re Kendall C., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Victor C. et al.

The orders are affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A098054 -- In re Kendall C., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Molly C.

The order is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A093980 -- David McMahon v. Albany Unified School District, et al.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A094011 -- The People v. James A. Pettaway.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Tuesday, January 28, 2003 (continued)

A097032 -- David Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO, et al.

We affirm. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J.
(Certified for Publication.)

Division Three

A098220 -- The People v. Christopher Rollins.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J.,
Corrigan, J. (Not for Publication.)

Division Four

A099576 -- Bishop's Ranch et al. v. City of Santa Rosa et al.

By the Court: Respondents' motion to dismiss is granted and this appeal,
filed July 15, 2002, is hereby dismissed as premature. Kay, P.J.

A098199 -- California First Amendment Coalition et al. v. California Department of Health Services et al.

The order is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not
for Publication.)

A097850 -- Morris E. Hurley v. James B. Hurley.

A099460 -- Morris E. Hurley v. Beverly J. Smith.

By the Court: Morris E. Hurley filed two notices of appeal. (See order.)
Given that appellant has died, appeal A097850 is dismissed. On identical ground,
appeal A099460 is similarly dismissed. The clerk of this court shall concurrently
file this order and issue a remittitur for each appeal. Kay, P.J.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, January 28, 2003

The Court convened at 9:30 a.m. at its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; Guardsmark Officer Michael Aurigui, Bailiff.

A098895 Doyle Blankenship, Jr.
v.
NACCO Materials Handling Group, Inc.
Cause called. Diane Abraham argued on behalf of appellant Blankenship. Dani Rogers argued on behalf of respondent. Cause submitted.

The Court adjourned at 9:57 a.m.

Tuesday, January 28, 2003 (continued)

Division Five

A097940 -- Myron Jackson, a Minor, etc., et al. v. Steven Gourley, as Director, etc.

The order granting issuance of a writ of mandate is affirmed. Gemello, J.
We Concur: Stevens, Acting P.J., Simons, J. (Certified for Publication.)

Wednesday, January 29, 2003

Division One

A098697 -- The People v. Darrell Ramey.

We affirm the judgment extending Ramey's commitment. Marchiano, P.J.
We Concur: Stein, J., Swager, J. (Not for Publication.)

A099746 -- In re Rachel W., a Person Coming Under the Juvenile Court Law. Social Services Agency v. Tammy P.

By the Court: Respondent's request for judicial notice and motion to dismiss appeal is granted. The appeal is dismissed, as moot. Marchiano, P.J.

Division Two

A097272 -- County of Contra Costa v. Robert Bruce Merwin.

The order granting the motion to set aside the stipulated judgment is reversed. The cause is remanded to the superior court to hold a hearing and make findings consistent with this opinion. No party is awarded costs. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A098728 - In re Phillip G., a Person Coming Under the Juvenile Court Law. The People v. Phillip G.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A097104 -- Massoumeh Housseini-Greer v. Wilber Woo, et al.

The judgment is reversed. Costs on appeal are awarded to appellant. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, January 29, 2003 (continued)
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, January 29, 2003

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness P.J., Corrigan J., Parrilli J., and C. Turner, Deputy Clerk.

- A097933 Jean Deleage,
v.
Gerald Rosenbluth, et al.,
Cause called and argued by Ernest M. Thayer, counsel for appellant, and
Katherine A. Knopoff, counsel for respondent. Cause ordered submitted.
- A097978 Oakland Unified School District,
v.
United Administrators of Oakland Schools.
Cause called and argued by Robert David Links, counsel for appellant, and
Janice L. Sperow, counsel for respondent. Cause ordered submitted.
- A097301 Si Nos Dejan,
A097780 v.
BPBH, et al.,
Cause called and argued by John Edward Mueller, counsel for appellant, and
Elizabeth E. Bader, counsel for respondent. Cause ordered submitted.
- A097360 The People,
v.
Charles Roy Giannotti.
Cause called and argued by Nora Mae Wellman, counsel for appellant, and
Nancy Tung, counsel for respondent. Cause ordered submitted.

Justice Corrigan announced that the panel for the next appeal is comprised of Parrilli, J., Pollak, J., and herself, but that Justice Pollak is away from the court and is unavailable for oral argument. All parties were informed that Justice Pollak will review the taped proceedings. Counsel agreed to waive

his presence. The court proceeded with oral argument.

A095225 Insurance Commissioner of the State of California,
v.
Golden Eagle Insurance Company, et al.,
v.
Fort- Forty-Niner Subaru/Isuzu, et al.,
Cause called and argued by Jeffrey D. Heiser, counsel for appellant, and
Richard Wilmshurst, appellant in pro-per. Cause was argued by Stacey
Leigh Pratt, counsel for respondent. Cause ordered submitted.

Justice McGuinness announced that the panel for the following case is
comprised of Parrilli, J., Pollak J., and himself. However, Justice Pollak is
away from the court and is unavailable for oral argument. All parties were
informed that Justice Pollak will review the taped proceedings. Counsel
agreed to waive his presence. The court proceeded with oral argument

A098665 In re the Marriage of Renee C. and Kurt Fisher,
Renee C. Fisher,
v.
Kurt Fisher.
Cause called and argued by Bernard Nathan Wolf, counsel for appellant, and
Kurt Fisher, counsel for respondent. Cause ordered submitted.

Justice Parrilli left the bench.

Justice McGuinness announced that the panel for the following case is
comprised of Corrigan, J., Pollak J., and himself. However, Justice Pollak is
away from the court and is unavailable for oral argument. All parties were
informed that Justice Pollak will review the taped proceedings. Counsel
agreed to waive his presence. The court proceeded with oral argument.

A096547 The People,
v.
Javier Gabriel Garcia.
Cause called and argued by Richard William Such, counsel for appellant, and
Nancy H. Tung, counsel for respondent. Cause ordered submitted.

Justice McGuinness announced that the panel for the following case is
comprised of Corrigan, J., Pollak, J., and himself. However, Justice Pollak is
away from the court and is unavailable for oral argument. All parties were

informed that Justice Pollak will review the taped proceedings. Counsel agreed to waive his presence. The court proceeded with oral argument.

A097675 The People,

v.

Michael Anthony Dodele.

Cause called and argued by Ozro William Childs, counsel for appellant arguing via-teleconference, and John R. Vance, counsel for respondent arguing via tele-conference. Cause ordered submitted..

court adjourned

Wednesday, January 29, 2003 (continued)

Division Four

A098785 -- The People v. Maulana Bodison.

The judgment is affirmed but the matter remanded to afford the court the opportunity to issue an amended abstract of judgment consistent with the views expressed herein. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A096082 -- The People v. David A. Gomez.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

A098185 -- The People v. Pasquale Nigro.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

A095590 -- Tadao Yamaguchi et al. v. Chaiyut Harnsmut et al.

The judgment is vacated. Appellant shall recover their costs on appeal. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Thursday, January 30, 2003

Division One

A098089 -- The People v. Surgury Kanuri Qawi.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A094963 -- The People v. Virgilio Matias Aveja.

The matter is remanded for the trial court to exercise its discretion and impose sentence in accordance with section 1203.2 and rule 4.435. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A090642 -- The People v. Henry L. Pippins.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A096508 -- The People v. Wilfred Carl Valtakis.

The judgment is (order) is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

Division Three

A096395 -- Industrial Indemnity Company, et al. v. Apple Computer, Inc.

A096396 -- Insurance Company of the State of Pennsylvania v. Apple Computer, Inc.

The order awarding Industrial its costs is reversed. The order awarding ICSOP its costs is reversed only insofar as it includes expert witness fees, and is otherwise affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Thursday, January 30, 2003 (continued)

A094414 -- Industrial Indemnity Company, et al. v. Apple Computer, Inc.

The fee order is reversed. Costs on this appeal shall be determined by the trial court on remand. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A094429 -- The People v. Troy Hayles.

The judgment of conviction is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A099320 -- Licet Guzman Mata, a Minor, etc. v. Mario Mata et al.

A099340 -- Francisco Rodriguez v. Mario Mata et al.

The summary judgment in favor of respondent Mata is reversed (A099320). The summary judgment in respondent Salata's favor is affirmed. (A099340). Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Certified for Publication.)

A098612 -- Karluk Mayweathers v. P.A. Cowan et al.

The Court:* The purported appeal is dismissed for want of jurisdiction. (Not for Publication.)

*Kay, P.J., Reardon, J., and Rivera, J.

Division Five

A097450 -- The People v. Alonzo Marquez Austin.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A097103 -- John Brennan v. Susan Baldini.

The order awarding attorney fees and costs is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Thursday, January 30, 2003 (continued)

A097302 -- David Dubbs v. Net Value Holdings, Inc., et al.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A099529 -- In re Stacy F., a Person Coming Under the Juvenile Court Law. The People v. Stacy F.

The orders adjudicating appellant a ward of the court and committing him to CYA are affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

A098687 --Burton Maxwell v. Department of Corrections.

The judgment is reversed and remanded to the trial court with directions that it enter judgment in this case against Maxwell and in favor of CDC. Costs on appeal are awarded to CDC. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A098344 -- The People v. Britton Sneed.

The order is modified to award restitution of \$637.50 for body damage, \$298.50 for towing costs, and \$11,161.46 for loss of use, with interest accruing thereon from March 8, 2002, pursuant to Penal Code section 1202.4, subdivision (f)(3)(G). As so modified, the order is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A098262 -- In re Bryan W., a Person Coming Under the Juvenile Court Law. The People v. Bryan W.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A099503 -- The People v. Mitcher Williams.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, January 31, 2003

Division One

A095796 -- The People v. Mario A. Irias.

The cause is remanded for resentencing. In all other respects, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A097316 -- Susan Walsh v. Farmers Insurance Company.

By the Court: Since this court's January 13, 2003 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Marchiano, P.J.

Division Two

A098651 -- The People v. Susan R. Caporale.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A096284 -- The People v. Eric Garrison.

The order of the trial court revoking appellant's probation and sentencing him to 16 months in state prison is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A097492 -- Curtis D. Mackey et al. v. Bristol West Insurance Services of California, Inc. et al.

We reverse the judgment dismissing the complaint on the ground that the trial court erred in sustaining the demurrer to the allegations in Mackey's FAC based on the improper notice of cancellation of his policy. In all other respects the judgment is affirmed and the matter is remanded for further proceedings consistent with this opinion. Each party shall bear their own costs on appeal. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

Friday, January 31, 2003 (continued)

Division Three

A099946 -- The People v. Darwin Scott Burns.

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A098707 -- In re Victor C., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Nohemy C.

We affirm the order denying the section 388 petition, and the order terminating Nohemy's parental rights. Parrilli, J. We Concur: Corrigan, Acting Parrilli, J. (Not for Publication.)

A097301 & A097780 (Consolidated) -- Si Nos Dejan v. BPBH, et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A097933 -- Jean Deleage v. Gerald Rosenbluth et al.

The trial court's order striking the class allegations of appellant's complaint is vacated. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A092667 -- The People v. Carlos Delgado.

In light of *People v. Johnson, supra*, 28 Cal.4th 240, the judgment is vacated, and the case is remanded so the trial court may strike a conviction, or convictions, and resentence Delgado as necessary. In all other respects, the judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A099804 -- The People v. Omar Shakab Fazli.

Judgment affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Friday, January 31, 2003 (continued)

A096912 -- In re the Marriage of Sharon and Algin Ford.

The August 23, 2001, orders are affirmed. Respondent is entitled to costs. (Cal. Rules of Court, rule 26(c).) Respondent's motion for sanctions under California Rules of Court, rule 26(a)(2), is denied. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A097360 -- The People v. Charles Roy Giannotti.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A098422 -- In re Segio M., a Person Coming Under the Juvenile Court Law. The People v. Sergio M.

The orders of the juvenile court are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A098764 -- The People v. Kevin Deion Sampson.

Having independently reviewed the entire record, we find no arguable issues for review. The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A096449 --The People v. Eugene Irving Webb.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

A098122 -- Modesto Aquino et al. v. Asiana Airlines, Inc., et al.

We affirm the judgment of the superior court to the extent it granted summary judgment on the cause of action for intentional infliction of emotional distress. In all other respects, we reverse the judgment and remand for further proceedings consistent with this opinion. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Certified for Partial Publication.)

Friday, January 31, 2003 (continued)

A096984 -- The People v. Nino Mario Carrara.

Judgment affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J.
(Not for Publication.)

A099175 -- The People v. Rudolph Hayes.

The judgment of the trial court is reversed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Certified for Publication.)

A100841 -- Jammie T. v. The Superior Court of Contra Costa County; Contra Costa County Children & Family Services, R.P.I.

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (1); Cal. Rules of Court, rule 39.1A(b)(2).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A096555 -- John Garamendi v. Golden Eagle Insurance Company; First Southwest Diversified Partners et al.

The orders of the trial court denying the application for order to show cause and the motion for reconsideration are reversed. The matter is remanded and the trial court is directed to enter a new order in favor of Coscan for \$899,379. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

A097650 -- The People v. Christopher John Goldberg.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Certified for Publication.)

Friday, January 31, 2003 (continued)

A100730 -- Ruben J. v. Superior Court of San Mateo County; Youth and Family Services of San Mateo County, R.P.I.

The order to show cause is discharged, and the petition for extraordinary relief and request for a stay are denied on their merits. (Cal. Const., art. VI, § 14; Cal. Rules of Court, rule 39.1B(o) *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (1).) Because the section 366.26 hearing is set for February 11, 2003, our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(a).) Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A097209 -- The People v. Erik Norman Ossman.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

A096686 -- The People v. John Solomon.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)